IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

RSA. NO. 340 of 2003.

Judgment Reserved on: **.21.5.2007**

Date of Decision: 12.6.2007

Kanshi Ram **…….Appellant**

Versus

Parmatama Singh & others **…… Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting? No

For the appellant: ***Mr. Kulbhushan Khajuria, Advocate.***

For the respondents: ***Mr. N.K. Thakur, Advocate, for respondents No.1 & 2.***

Kuldip Singh, J

The plaintiff Kanshi Ram is in appeal against judgment, decree dated 30.4.2003 passed by learned District Judge, Chamba in Civil Appeal No.71 of 2002, confirming judgment, decree dated 30.8.1997 passed by learned Sub Judge Ist Class, Chamba in Civil Suit No.53 of 1992. The parties are referred in the same manner as in the trial Court.

. The facts in brief are that plaintiff filed suit for declaration that the gift deed dated 10.6.1980, registered on 18.8.1980 is wrong, illegal and the result of fraud. The plaintiff is in possession of the suit land, if during the pendency of the suit, he is dispossessed by defendants No.1 and 2 from the suit land then possession of the suit land be also restored to him.

W*hether reporters of Local Papers may be allowed to see the Judgment?* *Yes*

The plaintiff has pleaded that he has no male child. The defendants No.1 & 2 made him to believe that he should execute a Will in their favour, they would look after him, his wife and will perform their last rites also. The defendants No.1 & 2 played fraud with plaintiff and instead of Will they got executed gift of the suit land in their favour on 10.6.1980 which was registered on 18.8.1980. The mutation No.405 dated 7.4.1989 in Mohal Shanbal and mutation No.175 dated 26.3.1981 in Mohal Bruila were also got attested. The plaintiff is in possession of the suit land. The defendants No.1 & 2 looked after him for only a few days. The defendants submitted an application for partition on 6.4.1990 to Assistant Collector and plaintiff came to know all about this in May 1990. The gift is the result of fraud and is not binding on him and hence gift and mutation be declared wrong and illegal. The plaintiff filed the suit on 1.5.1992.

The suit has been contested by defendants No.1 & 2 by filing joint written statement , in which they have taken preliminary objections of maintainability, limitation, estoppel and lack of cause of action. On merits it has been pleaded that plaintiff has two daughters who were married and he voluntarily executed the gift deed in their favour. They looked after the plaintiff and they are still serving him. Thy did not play any fraud with the plaintiff for execution of the gift deed. They are in possession of the suit land. The plaintiff admitted the gift at the time of attestation of mutation. The plaintiff signed the gift deed after understanding the document.

The learned trial Court dismissed the suit on 30.8.1997 by holding that the plaintiff has executed gift deed dated 10.6.1980, registered on 18.8.1980 in favour of defendants No.1 & 2 and the possession of the suit land was also delivered to defendants

No.1 & 2 by the plaintiff. The suit is time barred. The plaintiff filed the appeal against the decision dated 30.8.1997 which has been dismissed by learned District Judge, hence plaintiff is in second appeal.

The appeal has been admitted on the following substantial questions of law :-

1 *Whether the findings of the trial Court and the First Appellate Court are based on misreading and mis-interpretation of the oral and documentary evidence?*

2. *Whether the Courts below failed to take notice that the impugned gift deed was result of fraud and mis-representation?*

I have heard learned counsel for the parties and have also gone through the record.

Substantial Questions of law 1and 2:-

The case of the plaintiff is that he wanted to execute the Will but defendants No.1 & 2 by playing fraud got executed from him gift deed Ex.D-1 (Ex.D-5). In other words what has been denied by the plaintiff is the nature of the document and not the document. The suit of the plaintiff is based on fraud, therefore, the particulars of the fraud are required to be pleaded in accordance with order 6 Rule 5 CPC . The perusal of record would show that except for using the word ‘fraud’ the plaintiff has not pleaded his case of fraud in accordance with Order 6 Rule 5 CPC. There are no allegations against the scribe, marginal witnesses and the Sub Registrar for registering the document and the circumstances under which the mutations on the basis of gift were attested. DW-2 Dina Nath, Petition Writer has deposed that Ex.D-1 gift deed was scribed by him at the instance of the plaintiff in presence of marginal witnesses namely Dass and Harka who were brought by him. The gift deed was read over to plaintiff who after admitting its correctness signed it, the marginal witnesses had also signed and put

their thumb mark in his presence. No fraud was played with plaintiff. He scribed the gift as per directions of plaintiff. DW-3 Anil Kumar proved the registration of gift Ex.D-1. The plaintiff has admitted possession of defendants No.1 & 2 in Ex.D-1. Ex.P-4 is the mutation No.175 , Mauza Bruila which was attested on the basis of gift made by plaintiff and in his presence on 26.3.1981.

It has come on record that the gift deed was prepared on 10.6.1980 and an attempt was made to get the same registered on that very date but the Sub Registrar was not available. Thereafter plaintiff fell ill and it could be registered only on 18.8.1980. The Stamp papers of gift deed were purchased in the name of plaintiff Kansi Ram on 10.6.1980. There was a gap of about two months in between the date of execution of Ex.D-1 and its registration by Sub Registrar. It is not believable that during this period the plaintiff was not aware of the nature of the document actually executed by him. No body stopped plaintiff from questioning the nature of the document before the Sub Registrar when Ex.D-1 was registered on 18.8.1980. The plaintiff was identified by Brij Lal Nambardar before Sub Registrar at the time of registration. There is no allegations against Brj Lal.

The gift Ex.D-1 is registered. There is presumption under Section 60 of the Registration Act, 1908. The possession of the land pursuant to gift Ex.D-1 was delivered to defendants No.1 & 2. Their possession is recorded in Jamabandi 1980-1981 Mauza Bruila Ex.P-2 and reference of mutation No,.405 has been made in remarks column of jamabandi 1987-88, Mauza Sanwal. The two Courts below have concurrently come to the conclusion that plaintiff has executed gift Ex.D-1 in favour of defendants No.1 & 2 and delivered possession of the

suit land on the basis of gift to defendants No.1 & 2 who are in possession of the suit land.

The learned counsel for the plaintiff has relied upon ***Dola Ram vs. Piare Ram and others, 1998(2) Shim. L.C. 384,*** on the point that protection available in the case of a pardanashin lady is also available to an old, illiterate and village rustic lady. The plaintiff is not a woman. Moreover, present case is not on the premises that the plaintiff is not aware of worldly affairs and because of his ignorance defendants No.1 & 2 got prepared Ex.D-1. The specific case of the defendant is that he wanted to execute Will in favour of defendants No.1 & 2 but they got executed gift Ex.D-1 from him, which he has failed to prove. Dola Ram case (supra) is not applicable in the facts and circumstances of the case.

The learned counsel for the plaintiff has also relied upon ***Dharam Singh vs. Aso and another, AIR 1990 Supreme Court 1988*** on the point that a Registering authority (Registrar) cannot be a statutory attesting witness. In the present case, it is not the case of any party that Sub Registrar who registered Ex.D-1 is a attesting witness of the said document. Therefore, Dharam Singh case (supra) is not at all applicable in the present case.

The gift Ex.D-1 was executed on 10.6.1980 and registered on 18.8.1980, the plaintiff has alleged in the plaint that he came to know of the gift in May, 1990 when he received a notice of partition proceedings from Assistant Collector, Churah. No such notice has been placed on record. The suit was filed on 1.5.1992. The suit is apparently time barred. The plaintiff has not placed anything on record to show how the suit is within limitation.

The accumulative effect of the above discussion is that the plaintiff has failed to make out any case for interference. The substantial

questions of law 1 & 2 are decided against the plaintiff and in favour of defendants No.1 & 2.

In view of above discussion, the appeal is dismissed with no order as to costs..

(Kuldip Singh)
Judge

June 12, 2007
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